IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2574 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHEDA DISTRICT CO-OPERATIVE MILK PRODUCERS UNION LTD - Petitioner(s)

Versus

CHIMANBHAI K PANCHAL - Respondent(s)

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Appearance :

MR DEEPAK V PATEL for Petitioner(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 20/10/2005

ORAL JUDGMENT

1.By filing this petition, the petitioner has challenged the judgment and award passed by the Presiding Officer, Labour Court, Anand dated 8.11.1993 in Reference No.387 of 1992, by which the Labour Court has directed the

petitioner to reinstate the respondent – workman on his original post with continuity of service and with 40% back wages for the intervening period.

2. It is the case of the petitioner that the respondent was working as `B' Grade fitter in the Mogar Plant of the petitioner unit. It is the case of the petitioner that when the respondent was on duty in the first shift in he M.M.F.Unit on 27.02.1985, at about 10.35 A.M.,the supervisor asked the respondent to close the leakage of the self of Oven no.6 immediately so that it may not affect the production. It is further case of the petitioner that the aforesaid work was in connection with his normal work and duty. However, the respondent did not close the leakage in spite of repeated requests and the respondent deliberately refused to do the said work, got angry, used filthy language and slapped the Supervisor.

3. On 2.4.1985, the respondent was served with the show cause notice-cum-charge sheet. The respondent was charged for disorderly and insolent conduct and the conduct subversive of discipline i.e., for riotous, assaulting and slapping the Supervisor. According to the petitioner, this was a serious misconduct under the Standing Order No.22(1).

4.It is the case of the petitioner that the departmental inquiry was conducted against the respondent in connection with the charge sheet dated 2.4.1985. Ultimately, the respondent was found guilty of the charges levelled against him in the departmental inquiry. The Inquiry Officer submitted his report. Thereafter, the disciplinary authority, after considering the report of the inquiry officer and other aspects, decided to dismiss the respondent from service and ultimately the dismissal order dated 21.06.1985 came to be passed dismissing the respondent from service.

5.Being aggrieved and dissatisfied by the said dismissal order dated 21.06.1985, the respondent raised the industrial dispute which was referred to the Labour Court, Nadiad and numbered as Reference No.387 of 1992. The Labour Court, after considering the evidence on record, by its judgment and award dated 8.11.1993 set aside the dismissal order dated 21.06.1985 and directed the petitioner to reinstate the respondent – workman in service to his original post with continuity of service and also directed the petitioner to pay 40% back wages for the intervening period.

6.Being aggrieved and dissatisfied with the said judgment

and award dated 8.11.1993, the petitioner has preferred the present petition under Article 226 and 227 of the Constitution of India.

7. Heard the learned advocates for the parties and perused the material placed on record.

8. It is required to be noted that the Labour Court, after appreciating the evidence on record, came to the conclusion that by passing the dismissal order against the respondent – workman, it has caused economic death of the respondent. The Labour Court has also come to the conclusion that the past conduct of the respondent is good and for a period of 7 years, the respondent – workman has remained unemployed which itself is sufficient punishment. Ultimately, the Labour Court, by its judgment and award dated 8.11.1993, directed the petitioner to reinstate the respondent – workman to his original post with continuity of service and directed the petitioner to pay 40% back wages for the intervening period since the respondent was not gainfully employed.

9. During the course of hearing, it is submitted by Mr.Mukesh Rathod, learned advocate appearing for the petitioner that the petitioner has attained the age of superannuation. It is to be noticed that the respondent

had disobeyed the instruction of the superior officer for which he has been sufficiently punished by remaining outside the job. Considering the nature of misconduct committed by the respondent, the order of dismissal against the respondent is very harsh and therefore, I am of the considered opinion that the Labour Court has not committed any error, much less, the jurisdictional error in directing the petitioner to reinstate the respondent – workmen in service with continuity of service. I, therefore, uphold the judgment and order passed by the Labour Court directing the petitioner to reinstate the respondent – workman with continuity of service. Since the respondent – workman has attained the age of superannuation as stated by the learned advocate appearing for the respondent, the petitioner is directed to pay retiral benefits to the respondent – workman within a period of 4 months from today. However, in the facts and circumstances of the case, I direct the petitioner to pay 20% back wages instead of 40% back wages as awarded by the Labour Court vide judgment and order dated 8.11.1993.

10. In this view of the matter, this petition is partly allowed. Rule is made absolute to the aforesaid extent.

No costs. Interim relief granted earlier stands vacated.

(SHARAD D DAVE, J)

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